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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/509,239

09/24/2004

Johannes Johanna Van Herk

NL 020256

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

HOLMES, REX R

ART UNIT

PAPER NUMBER

3762

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/509,239

Applicant(s)

VAN HERK ET AL.

Examiner

Rex Holmes

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim1, the preamble is inconsistent with the claim body. The only thing claimed is an electrode; it is unclear how an electrode makes a monitoring system.

6. Claim 1 recites the limitation "...to be brought into a contact with a recipient's skin..." in line 15 of the claims. This is vague and unclear as an apparatus claim cannot claim connection to the body. It is suggested to use "...adapted to be brought...".

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7. Claim 4 recites the limitation "...two layers of insulating material..." in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim. The term is inferentially included. It is unclear if the applicant is positively reciting the element. It is suggested to first set forth that the claim has this element before it is used.

8. Claim 5 recites the limitation "...said system is a cardiac arrest monitoring system..." in lines 2 and 3 of the claim. This is vague and unclear as claim 1 is only drawn to an electrode and not toward a monitoring system.

9. Claim 6 recites the limitations "fabric-based elastic belt" and "wearable garment" in line 3 of the claim. There is insufficient antecedent basis for these limitations in the claim. These terms are inferentially included. It is unclear if the applicant is positively reciting the elements. It is suggested to first set forth that the claims have these elements before they are used.

10. Claim 7 is vague and unclear as it fails to further limit the parent claim. Claim 1 is already just an electrode structure.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Byers et al. (U.S. Pat. 4,969,468 hereinafter "Byers").

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13. Regarding claims 1-4 and 7, Byers discloses a electrode array for sensing physiological signals through the skin, made out of a conductive flexible/stretchable material with projections made out of metal that are arranged in a uniform pattern on the surface of the electrode (e.g. Col. 7, ll. 18-25; Col. 10, ll. 22-30; Col. 12, ll. 25-40; Figs. 4-6). Byers further discloses that the electrode body is sandwiched between two insulating layers with the tips of the projections sticking through the layers (e.g. Fig. 4 & Col. 6, ll. 38-53).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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16. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byers as applied to claim 1 above, and further in view of Owen et al. (U.S. Pat. 6,148,233 hereinafter "Owen").

17. Byers discloses the claimed invention including an electrode array for sensing physiological signals, such as ECG, made out of a conductive flexible/stretchable material with projections made out of metal that are arranged in a uniform pattern on the surface of the electrode as disclosed above except for a wearable cardiac arrest monitor. Owen teaches that it is known to use a wearable system with pad style electrodes as set forth in e.g. Column 1, lines 56-63 and Column 19, lines 30-35 to provide for monitoring ECG and treating cardiac arrest. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the array as taught by Byers, with the portable cardiac arrest monitor as taught by Owen, since such a modification would provide the array with a cardiac monitor for providing a means to monitor and treat cardiac arrest without having to invasively implant a monitor.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rex Holmes whose telephone number is 571-272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Rex Holmes
Examiner
Art Unit 3762



George Evanisko
Primary Examiner
Art Unit 3762
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